

The Facts :

3. The factual matrix, in short, reveals that the petitioners suffered order-in-original dated 12th January, 2006 passed by th Joint Director Genera of Foreign Trade; ordering therein; recovery of an amount of Rs.18,56,236/- from the petitioner No.1 and its directors with interest thereon from 9th January, 1997 till date of actual payment (amounting to Rs.25,08,207/-) including fiscal penalty on its directors in the sum of Rs.15,000/-.

4. The petitioners not being satisfied with the above order filed appeal with application for stay before respondent No.2.

5. The Assistant Commissioner of Customs, respondent No.3 herein; before the said appeal and stay application could be filed, called upon the petitioners to pay Rs.18,56,236/- along with interest thereon @ 15% from the date specified therein, within 10 days from the date of receipt of notice, failing which, threaten with the coercive recovery proceedings against the petitioners under section 42 of the Customs Act.

6. The petitioners vide their letter dated 21st February, 2006 requested respondent No.3 not to

take any coercive action till the appeal and stay application are heard and disposed of by respondent No.2.

7. It appears that the appellate authority, respondent No.2 herein; has already heard the said appeal and closed it for orders. However, the appellate authority is yet to dispose of the appeal finally. It appears that since the appeal was to be finally disposed of no orders on the stay application were passed.

8. It appears that during the pendency of the aforesaid adjudication of the appeal by the appellate authority, the Tahasildar, respondent No.4 herein; on the basis of the revenue recovery certificate; initiated recovery proceedings and tried to attach the property of the petitioners for the recovery of Rs.43,79,445/-. When the Tahasildar approached the petitioners, it appears that the petitioner No.1 issued a cheque in the sum of Rs.43,79,445/- under protest in order to avoid attachment and embarrassment to the petitioners.

9. The petitioners have now filed this petition challenging recovery proceedings and attempt to attach their properties pending disposal of their

appeal and prayed for interim stay of the recovery proceedings and/or encashment of cheque.

10. Mr.Bharucha, learned senior counsel appearing for the petitioners submits that the appeal has already been heard. The judgment of the appellate Court is likely to be out within a short period. He submits that the petitioners hope to succeed in the appeal as they have made out prima facie in the appeal. Hence, recovery proceedings be stayed and respondent No.4 be restrained from encashing the cheque in question.

11. Mr.Rana, learned senior counsel appearing for respondent Nos.1, 2 and 3 while opposing the above prayer submits that the petitioners must secure the dues payable by it, may be by furnishing bank guarantee.

12. Mr.Sayed, learned A.G.P. appearing for respondent No.4 submits that the cheque has already been forwarded to the Reserve Bank of India for encashment, though the said cheque is yet to be lodged on the bankers of the petitioner company for its encashment. He submits that the cheque is likely to be lodged for encashment in due course. Mr.Sayed, learned A.G.P. submits that the petitioners be

directed to deposit entire arrears in cash with this Court.

13. Mr.Bharucha, while reacting the above submissions, came out with the readiness to furnish bank guarantee in the sum of Rs.43,79,500/- so as to secure the outstanding dues of the Revenue, if any.

Consideration :

14. Having heard rival parties, it is not in dispute that as on date cheque has not been encashed. It is also not in dispute that the appeal has been heard and final verdict in the appeal is awaited. It is not in dispute that the interest of the Revenue needs to be protected. Thus, considering the facts and circumstances of the case and consensus between the parties, we dispose of this petition with direction to the petitioners to furnish bank guarantee in the sum of Rs.43,79,500/- in favour of Tahasildar, respondent No.4 herein so as to secure the amount of tax recoverable from the petitioners.

15. The petitioners are permitted to instruct their bankers not to encash the cheque subject to furnishing bank guarantee in favour of respondent No.4 in the sum of Rs.43,79,500/-. the said bank guarantee shall operate as security for the tax

arrears during pendency of the appeal before
respondent No.2.

16. The appellate authority, respondent No.2
herein; is directed to dispose of the appeal as
expeditiously as possible, at any rate, within four
weeks from the date of receipt of copy of this order.

17. It is made clear that in the event of
verdict in the appeal adverse to the petitioners, it
would be open for respondent No.4 to encash bank
guarantee after expiry of two weeks from the date of
receipt of the order of the appellate authority viz.
respondent No.2.

18. Petition stands disposed of. Rule is made
absolute in terms of this order. No order as to
costs.

19. All the concerned to act on authenticated
copy of this order.

(J.P.DEVADHAR, J.)

(V.C.DAGA J.)